

RITE AID SETTLEMENT AGREEMENT

I. PARTIES

This Settlement and Release Agreement ("Agreement") is entered into this 28 day of May, 200^y3. The parties to this Agreement are the State of Michigan and Rite Aid Corporation, and are referred to collectively as the "Parties."

The Parties now agree as follows:

II. PREAMBLE

- A. Rite Aid Corporation ("Rite Aid") is a national pharmacy, which at the relevant time period, operated in the District of Columbia and thirty states in the United States.
- B. Rite Aid is entering into a settlement agreement with the United States of America (the "U. S. Agreement"), acting through its Department of Justice (the "Department of Justice") and the Office of the Inspector General of the United States Department of Health and Human Services ("HHS-OIG"), the Office of Personnel Management, which administers the Federal Employee Health Benefits Program ("FEHBP"), and the TRICARE Management Activity ("TMA") (collectively, the "United States"), and settlement agreements with the states set forth in Exhibit "A," attached hereto (the "Participating States"). Collectively, this Agreement and the agreements referred to in this Paragraph address the United States' and the Participating States' civil or administrative claims against Rite Aid for the conduct that is alleged in Paragraphs C and D below (such alleged conduct hereinafter referred to as the "Covered Conduct").
- C. On April 23, 1998, Larry B. Friedman ("Friedman"), in his individual capacity and as a relator on behalf of the United States, filed an amended complaint, under seal, in the United States District Court for the Eastern District of Pennsylvania, under the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730. On September 28, 2001, the United States intervened in the qui tam suit, which is captioned United States ex rel. Larry B. Friedman v. Rite Aid Corporation, and docketed as Case No. 97-CV-7889 (E.D.Pa.) ("Lawsuit"). Friedman alleges in the Lawsuit that Rite Aid violated the False

Claims Act by: (i) allegedly returning to stock and failing to delete or readjudicate prescriptions that were billed to federal health insurance programs but were not picked up by customers; and (ii) allegedly restocking items without "lot control," thereby allegedly resulting in "adulteration of stock." The conduct specified above in this paragraph and below in footnote 1 is hereinafter referred to as the "Covered Conduct."¹

D. In addition to the allegations set forth in Paragraph C, the State of Michigan also alleges that it sustained damages from January 1, 1997 and December 31, 2001 because Rite Aid billed the State of Michigan for prescriptions that were never delivered to customers.

E. Rite Aid denies the allegations set forth in Paragraphs C and D, and denies that it is liable under the False Claims Act, 31 U.S.C. Sections 3729-3733, or under any other civil, administrative or criminal cause of action with regard to such allegations. Nothing in this Agreement or any obligation herein shall constitute an admission by Rite Aid that it has violated or breached any act, law, regulation, obligation or contract.

F. The Parties mutually desire to compromise and settle the claims alleged in Paragraphs C and D and, thereby, avoid the costs and disruption of continued litigation.

¹ Covered Conduct also includes allegations in United States ex rel. Altman v. Rite Aid Corporation, et al., Civ. No. 2:96-1005-2 (D.S.C.)(UNDER SEAL) that Rite Aid violated the False Claims Act by knowingly submitting claims to federal health insurance programs for full prescriptions, when those prescriptions were only partially dispensed.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

OBLIGATIONS OF RITE AID

1. Payment to the Participating States: Rite Aid agrees to pay to the Participating States the aggregate amount of \$1,400,000.00 (the "Settlement Amount") within seven (7) days following the Effective Date of this Agreement (as hereinafter defined).
2. Manner and Method of Payment: The payment provided for in Paragraph 1 shall be by electronic transfer pursuant to instructions furnished by the State of New York as the dispersing agent for itself and the other Participating States.
3. Integrity Agreement: Rite Aid has entered into a Corporate Integrity Agreement ("CIA") with the HHS-OIG. That agreement is incorporated into this Agreement by reference. By executing this Agreement, the State of Michigan specifically accepts the manner in which Rite Aid bills and dispenses partially filled prescriptions as described in the CIA. The State of Michigan shall be entitled to request and review all reports, and have access to all information that Rite Aid is required to report, produce or maintain pursuant to the CIA, either through HHS OIG, or directly from Rite Aid.

OBLIGATIONS OF THE STATE OF MICHIGAN

4. The portion of the Settlement Amount for the State of Michigan, which the State of New York will disperse to the State of Michigan, is \$75,321.52 (the "State Share"). The State Share shall be paid to the State of Michigan to settle that portion of the Medicaid claims which were state funded, including expenses. The portion of the Medicaid claims which were federally funded shall be paid pursuant to the U.S. Agreement.
5. In consideration of this Agreement and payment of the State Share, and except as provided in Paragraph 7, the State of Michigan hereby releases and discharges Rite Aid

and its current and former shareholders, officers, directors, employees, subsidiaries, affiliates, predecessors, successors, and assigns (collectively, the "Released Parties") from any and all civil or administrative claims for damages or penalties the State of Michigan has or may have against any of them for claims submitted to the State of Michigan's Medicaid program for the Covered Conduct alleged in Paragraphs C and D of this Agreement.

6. In consideration of the obligations of Rite Aid set forth in this Agreement, conditioned upon Rite Aid's payment in full of the Settlement Amount, the State of Michigan hereby releases and agrees to refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from the State of Michigan's Medicaid program against the Released Parties for the covered conduct alleged in Paragraphs C and D, except as reserved in Paragraph 7, and as reserved in this Paragraph Rite Aid acknowledges that the State of Michigan does not have the authority to release, and does not release, the Released Parties from (i) any mandatory exclusion under 42 U.S.C. § 1320a-7(a), (ii) any exclusion from the State of Michigan Medicaid program which is mandated by federal law, and (iii) any claims or actions which may be asserted by private insurers, including those that are paid on a capitated basis for providing health care to the State's Medicaid recipients. The Released Parties do not waive any defenses they may have to such claims or actions.

7. Specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including the Released Parties) are any and all of the following:

- i Any civil, criminal, or administrative claims of the State of Michigan arising under state tax codes;
- ii Any criminal liability that Rite Aid has or may have to the State of Michigan;
- iii Any other liability explicitly reserved in this Agreement;

- iv. Any civil or administrative liability that the Released Parties have or may have under any state statute, regulation or rule not covered by the release in Paragraphs 5 and 6 above; or
- v. Any claims based upon such obligations as are created by this Agreement.

MISCELLANEOUS PROVISIONS

8. Rite Aid releases the State of Michigan, and its agencies, employees, servants, and agents from any claims (including attorneys' fees, costs and expenses of every kind and however denominated) which Rite Aid has asserted, could have asserted, or may assert in the future against the State of Michigan, and its agencies, employees, servants and agents, related to the Covered Conduct alleged in Paragraphs C and D, and the State of Michigan's investigation and prosecution thereof.

9. Rite Aid agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") Sections 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. Sections 1395-1395ddd (1997) and 1396-1396v (1997), and the regulations promulgated thereunder) incurred by or on behalf of Rite Aid, in connection with:

- i. The matters covered by this Agreement;
- ii. The United States' or the Participating States' investigation of the matters covered by this Agreement;
- iii. Rite Aid's investigation, defense and corrective actions undertaken in response to the United States' or the Participating States' investigation in connection with the matters covered by this Agreement (including attorneys' fees and the obligations undertaken pursuant to the CIA incorporated in this Agreement);
- iv. The negotiation of this Agreement; and
- v. The payment made pursuant to this Agreement,

are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TMA, Veterans Affairs Program ("VA") and FEHBP ("unallowable costs").

10. Rite Aid will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Rite Aid to the Medicare, Medicaid, TMA, VA or FEHBP programs.

11. Except as provided herein, this Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

12. Rite Aid agrees that it will not seek payment for any of the health care billings covered by Paragraphs C and D of this Agreement from any health care beneficiaries or their parents or sponsors. Rite Aid waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by Paragraphs C and D of this Agreement.

13. This Agreement shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Rite Aid or the other Released Parties.

14. In addition to all other payments and responsibilities under this Agreement, Rite Aid agrees to pay the travel costs and expenses of the state negotiating team. The amount of these expenses is \$2,500.00 in the aggregate. Rite Aid will pay this amount by separate check or wire transfer made payable to the National Association of Medicaid Fraud Control Units at the same time as payment is made pursuant to Paragraphs 1 and 2 above.

15. Except as provided in Paragraph 14, each party to this Agreement agrees to bear its own legal fees and other costs incurred in this matter, provided, however, that the Participating States may agree to further allocations of such fees and costs among and between themselves

16. This Agreement is governed by the laws of the State of Michigan.

17. This Agreement and the CIA which is incorporated herein by reference constitute the complete agreement between the State of Michigan and Rite Aid. This Agreement may not be amended except by written consent of the Parties except that only Rite Aid and HHS-OIG must agree in writing to modification of the CIA. Separate agreements concerning the Covered Conduct alleged in Paragraphs C and D have been executed (simultaneously herewith and as a condition to the execution of this Agreement and the payments hereunder) between: (1) Rite Aid and the United States; (2) Rite Aid and Friedman; (3) Friedman and the United States; (4) Rite Aid and Altman; (5) Altman and the United States; and (6) Rite Aid and the other Participating States.

18. The undersigned individuals signing this Agreement represent and warrant that they are authorized to execute this Agreement.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

20. The Parties agree that they will execute and deliver all such other documents and instruments as may be necessary and appropriate to effectuate the terms of this Agreement.

21. This Agreement is effective on the date of the last signatory to the Agreement (the "Effective Date"), and is binding on successors, transferees, heirs and assigns.

FOR THE STATE OF MICHIGAN:
ATTORNEY GENERAL

By: _____

Director, Medicaid Fraud
Control Unit

Date: _____

11/24/03

By: _____

FOR THE MEDICAID PROGRAM OF THE
STATE OF MICHIGAN

Date: _____

11-24-2003

FOR RITE AID CORPORATION:

By: _____

Robert B. Sari

Title: _____

Senior Vice President

Date: _____

May 7, 2004

Attorney for Rite Aid

Eric W. Sitarchuk, Esquire

Date: _____

5/28/04

RITE AID SETTLEMENT AGREEMENT

EXHIBIT A

Participating States:

Alabama
Arizona
California
Colorado
Connecticut
Delaware
District of Columbia
Georgia
Idaho
Indiana
Kentucky
Louisiana
Maine
Maryland
Michigan
Mississippi
Nevada
New Hampshire
New Jersey
New York
Ohio
Oregon
Pennsylvania
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wyoming

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